

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: March 30, 2009

Signature: _____

(William A. Di Bianca)



Docket No.: SPINE 3.0-437 CPCPCPCPCPCPCP I CON III
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Errico et al.

Application No.: 10/663,488

Confirmation No.: 2425

Filed: September 16, 2003

Art Unit: 3738

For: INTERVERTEBRAL SPACER DEVICE
HAVING AN ENGAGEMENT HOLE FOR
MANIPULATION USING A SURGICAL
TOOL

Examiner: B. E.
Pellegrino

PETITION UNDER 37 C.F.R. § 1.78(A)(3)
TO CORRECT PRIORITY INFORMATION

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. SUMMARY

This petition is submitted to correct the priority information in U.S. Patent Application 10/663,488 ("the '488 application"). In particular, the relationship information, in the original filing on September 16, 2003 and in the Amendment filed on August 2, 2006, for the applications from which benefit is claimed is believed to be incorrect and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,410.00 is provided herewith.

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Petitioner submits that the Domestic Priority Data as stated in the Corrected Filing Receipt (mailed April 23, 2004)

is incorrect. Petitioner requests that the Domestic Priority Data be revised as shown in the attached "Initial" Application Data Sheet, in the Request for Corrected Filing Receipt and in the revisions to the specification in a Supplemental Amendment filed today, and any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

II. FACTS

A statement of domestic priority data, on the first page of the specification of the '488 application, filed September 16, 2003, included a claim for priority under 35 U.S.C. §120 as a "continuing application of U.S. Patent Application Serial Number ("USPASN") 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods for use in Implanting an Artificial Intervertebral Disc" ("the '356 application") and a continuing application of USPASN 10/309,585 (filed December 4, 2002) entitled "Static Trials and Related Instruments and Methods for use in Implanting an Artificial Intervertebral Disc" ("the '585 application") and a continuing application of USPASN 10/425,267 (filed April 29, 2003) entitled "Wedge Plate Inserter/Impactor and Related Methods for use in Implanting an Artificial Intervertebral Disc" ("the '267 application"). The '356 application is a continuing application of USPASN 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post" ("the '160 application"), which is a parent application of USPASN 10/642,528 (filed August 15, 2003) entitled "Axially Compressible Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post" ("the '528 application") and a continuing application of USPASN 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuing application of USPASN 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a continuing application of both USPASN 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device

Utilizing a Spirally Slotted Belleville Washer Having Radially Extending Grooves" as well as USPASN 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a continuing application of USPASN 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves" and the latter being a continuing application of both USPASN 09/970,479 (detailed above) as well as USPASN 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", which is a continuing application of both USPASN 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers" as well as USPASN 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements". No Application Data Sheet was filed with the application.

Subsequent to the filing of the '488 application, the '488 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and received by the USPTO on March 3, 2005. A Notice of Acceptance of Power of Attorney was mailed on May 24, 2005 by the USPTO.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '488 application was incorrect. The prosecuting attorney filed an Amendment on August 2, 2006 listing incorrect domestic priority information as a "continuation-in-part application of U.S. Patent Application Serial Number ("USPASN") 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods for use in Implanting an Artificial Intervertebral Disc" ("the '356 application") and a continuation application of USPASN 10/309,585 (filed December 4, 2002) entitled "Static Trials and Related Instruments and Methods for Use in Implanting an Artificial Intervertebral Disc" ("the '585 application") and a continuation application of USPASN 10/425,267 (filed April 29,

2003) entitled "Wedge Plate Inserter/Impactor and Related Methods for use in Implanting an Artificial Intervertebral Disc" ("the '267 application"). The '356 application is a continuation-in-part application of USPASN 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post" ("the '160 application"), which is a parent application of USPASN 10/642,528 (filed August 15, 2003) entitled "Axially Compressible Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post" ("the '528 application") and continuation-in-part application of USPASN 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuation-in-part application of USPASN 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervetebal Space", which is a continuation-in-part application of both USPASN 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a Spirally Slotted Belleville Washer Having Radially Extending Grooves" as well as USPASN 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a continuation-in-part application of USPASN 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves" and the latter being a continuation-in-part application of both USPASN 09/970,479 (detailed above) as well as USPASN 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", which is a continuation-in-part application of both USPASN 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers" as well as USPASN 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements". All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties".

The prosecuting attorney incorrectly claimed priority to U.S. Application 10/642,528 (filed August 15, 2003), now U.S. Pat. 7,160,327, and inadvertently filed the Amendment without this petition and related fee.

III. NATURE OF PETITION

Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the "Initial" Application Data Sheet, Request for Corrected Filing Receipt and Amendment filed today.

The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: March 30, 2009

Respectfully submitted,

By 

William A. Di Bianca

Registration No.: 58,653

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants